

The Examiner asserts that the “groups of inventions listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: EP 0893237 to Ogawa shows that the subject matter of claim 70 is old in the art.” *Id.* at 6. As an initial point, Applicants do not necessarily agree with or adopt the Examiner’s characterization of EP 0 893 237 and the claimed invention. Nonetheless, whether or not EP 0 893 237 shows the subject matter of claim 70 does not dictate that the Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1. Moreover, the fact that the elections of species is substantially the same, irrespective of the Group selected, contradicts the Examiner allegations. Hence, the restriction is improper on its face.

Furthermore, Applicants respectfully refer the Examiner to M.P.E.P. § 803, which sets forth the criteria and guidelines for Examiners to follow in making proper requirements for restriction. The M.P.E.P. instructs the Examiner as follows:

If the search and examination of all the claims in an application can be made **without serious burden**, the examiner **must** examine them on the merits, even though they include claims to independent or distinct inventions.

M.P.E.P. § 803 (emphasis added).

Here, the Examiner has not shown that examining Groups I to II together would constitute a serious burden, irrespective of whether or not they relate to a single general inventive concept. The Examiner does not specify what serious burden will be placed on the Examiner if the Examiner were to proceed in examining Groups I and II together, as required by M.P.E.P. § 803.

Because Group I is elected, the Examiner additionally requires election from each of the following groups of species:

- A1. A species in which the protruding elements are ribs
- A2. A species in which the protruding elements are honeycombs.
- B1. A species in which the protruding elements are integral with the support.
- B2. A species in which the protruding elements are constructed separately from the support.
- C1. A species in which the pressing is carried out before heating.
- C2. A species in which the pressing is carried out after heating.
- C3. A species in which the pressing is carried out during heating.

Office Action at 2-3.

Applicants respectfully traverse this species election requirement. Nevertheless, to be fully responsive, Applicants elect, with traverse, Species A1, B1, and C3. Accordingly, at least claims 48, 49, 51, 52, 55-65, 68 and 69 are under initial consideration.

The Examiner asserts that the “species are independent and distinct because they lack unity of invention for the reasons indicated below.” *Id.* at 5. However, the Examiner provides no reasons below or above.

After identifying the groups of species for election, the Examiner is **required** to identify the basis for asserting that lack of unity exists under PCT Rule 13.1. See M.P.E.P. § 1893.03(d). Yet here, the Examiner has not even attempted to apply form paragraphs 18.07 thru 18.07.03, as recommended by the M.P.E.P., let alone provide any analysis whatsoever. See *id.*; see also, M.P.E.P. § 1850. Hence, the election requirement is improper on its face.

As with the election requirement, the Examiner also failed to show that a serious burden exists to examine all of the alleged species. To make a proper requirement for an election of species the Examiner must, inter alia, show that the search and examination of a claim would impose a serious burden on the Office because it embraces an unreasonable number of species. See M.P.E.P. § 803.02. Here, the Examiner has provided no reasons or evidence on the record to substantiate the election of species requirement, let alone how examination of all the species would impose a serious burden.

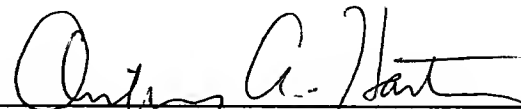
If the Examiner chooses to maintain the election of species requirement, Applicants expect the Examiner, if the elected species is found allowable, to continue to examine the full scope of the elected subject matter to the extent necessary to determine the patentability thereof, *i.e.*, extending the search to a "reasonable" number of the non-elected species, as is the duty according to M.P.E.P. § 803.02 and 35 U.S.C. § 121.

If there is any fee due in connection with the filing of this Response, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

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